

BEFORE THE BOARD OF SOCIAL WORK EXAMINERS

STATE OF IDAHO

ORIGINAL

In the Matter of the License of:)
CINDY LYNN BROWN,)
License No. SW-1362,)
Respondent.)

Case No. SWO-B6A-04-01-005

**STIPULATION AND
CONSENT ORDER**

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WHEREAS, information having been received by the Idaho State Board of Social Work Examiners (hereinafter the "Board") which constitutes sufficient grounds for the initiation of an administrative action against Cindy Lynn Brown (hereinafter "Respondent"); and

WHEREAS, the parties mutually agree to settle the matter pending administrative Board action in an expeditious manner; now, therefore,

IT IS HEREBY STIPULATED AND AGREED between the undersigned parties that this matter shall be settled and resolved upon the following terms:

A.

1. The Board may regulate the practice of social work in the State of Idaho in accordance with title 54, chapter 32, Idaho Code.

2. Respondent Cindy Lynn Brown is a licensee of the Idaho State Board of Social Work Examiners and holds License No. SW-1362 to practice social work in the State of Idaho. Respondent's license is subject to the provisions of title 54, chapter 32, Idaho Code.

3. On or about March 14, 2000, a Criminal Complaint was filed against Respondent in State v. Brown, Idaho Sixth Judicial District for Bannock County Case No. CRFE-00-00158 for grand theft, a felony, in violation of Idaho Code §§ 18-2403(a) and

18-2407(1). A true and correct copy of the Criminal Complaint is attached hereto as Exhibit A.

4. On or about December 7, 2000, upon Respondent's agreement to pay \$19,000.00 restitution, Respondent entered a guilty plea to petit theft, a misdemeanor, in violation of Idaho Code §§ 18-2403 and 18-2407(2). A true and correct copy of the 12/12/00 Minute Entry and Order is attached hereto as Exhibit B.

5. On or about January 8, 200[1], as a result of her entry of a guilty plea in Case No. CRFE-00-00158, Respondent was sentenced to one year in the Bannock County Jail with 275 days suspended and placed on probation for two years. A true and correct copy of the 1/8/01 Judgment is attached hereto as Exhibit C.

6. In a February 13, 2001, Minute Entry and Order, the Court noted that, in a psychological assessment by Kenneth P. Lindsey, Ph.D, of Psychological Assessment Specialists, Dr. Lindsey recommended that Respondent receive aggressive medication management and counseling services, that those services continue upon placement in the community as a condition of probation, that Respondent would benefit from skills-based interventions focused upon improving mood management and interpersonal problem-solving skills, that Respondent's compulsive/addictive activities will require focus in counseling, and that a relapse prevention approach would assist Respondent avoid problematic behaviors. A copy of the 2/13/01 Minute Entry and Order is attached hereto as Exhibit D.

7. On or about February 15, 2001, the Court ordered Respondent to be released from the Bannock County Jail and for Respondent to serve the remainder of her jail time on house arrest, one day of jail time in exchange for two days on house arrest. The Court also ordered Respondent to follow-up with any recommendations of Dr. Lindsey, including complying with her physician's recommendations concerning the taking of psychotropic medications for bipolar and panic symptomatology, and to attend

and cooperate on a weekly basis with her counselor. A true and correct copy of the 2/15/01 Minute Entry and Order is attached hereto as Exhibit E.

8. The above-stated allegations, if proven, would constitute a violation of the laws and rules governing the practice of social work, specifically Idaho Code § 54-3211(1), conviction of any offense involving moral turpitude. Violations of this law would further constitute grounds for disciplinary action against Respondent's license to practice social work in the State of Idaho.

9. Respondent, in lieu of proceeding with a formal disciplinary action to adjudicate the allegations as set forth above, hereby agrees to the discipline against her license as set forth in Section C below.

B.

I, Cindy Lynn Brown, by affixing my signature hereto, acknowledge that:

1. I have read the allegations pending before the Board, as stated above in section A. I further understand that these allegations, if proven, may constitute cause for disciplinary action upon my license to practice social work in the State of Idaho.

2. I understand that I have the right to a full and complete hearing; the right to confront and cross-examine witnesses; the right to present evidence or to call witnesses, or to so testify myself; the right to reconsideration; the right to appeal; and all rights accorded by the Administrative Procedure Act of the State of Idaho and the laws and rules governing the practice of social work in the State of Idaho. I hereby freely and voluntarily waive these rights in order to enter into this stipulation as a resolution of the pending allegations.

3. I understand that in signing this consent order I am enabling the Board to impose disciplinary action upon my license without further process.

C.

Based upon the foregoing stipulation, it is agreed that the Board may issue a decision and order upon this stipulation whereby:

1. License No. SW-1362 issued to Respondent Cindy Lynn Brown is hereby placed upon probation for eighteen (18) months, pursuant to the following terms and conditions:

a. Respondent shall pay to the Board an administrative fine in the amount of One Thousand and No/100 Dollars (\$1,000.00) within ninety (90) days of the entry of the Board's Order.

b. Respondent shall pay investigative costs and attorney fees in the amount of Five Hundred and No/100 Dollars (\$500.00) within thirty (30) days of the entry of the Board's Order.

c. Respondent shall comply with all conditions of her probation in Bannock County Case No. CRFE-00-00158, and upon release from probation she must submit certification from her probation officer and/or other appropriate court officer that Respondent has successfully completed her probation. Any violation of the probationary terms in Bannock County Case No. CRFE-00-00158 shall be considered a violation of this Consent Order and will result in the immediate suspension of Respondent's license for five (5) years.

d. Respondent shall direct any health care professional consulted as a result of the Court's February 15, 2001, Minute Entry and Order, to provide quarterly status reports concerning Respondent's prognosis and treatment, including her compliance with medication management by Respondent's physician;

e. Respondent shall direct Tanna Forsman, or any other mental health care professional consulted for mental health treatment, to provide quarterly status reports updating the Board with the course and scope of her counseling sessions, as well as any prognosis and goals for continued counseling;

f. If Respondent is or will be employed as a social worker, Respondent shall direct her immediate supervisor to provide quarterly status reports concerning Respondent's performance and ability to safely and ethically execute her job duties;

g. Respondent shall execute a release of information allowing the Board to obtain access to any information it deems relevant to effectuating the terms of this order. The release is attached hereto as Exhibit F;

h. Respondent shall comply with all state, federal and local laws, rules and regulations governing the practice of social work in the State of Idaho;

i. Respondent shall inform the Board in writing of any change of place of practice or place of business within 15 days of such change;

j. In the event Respondent should leave Idaho for three (3) continuous months, or to reside or practice outside of the state, Respondent must provide written notification to the Board of the dates of departure, address of intended residence or place of business, and indicate whether Respondent intends to return. Periods of time spent outside Idaho will not apply to the reduction of this period or excuse compliance with the terms of this Stipulation;

k. Respondent shall fully cooperate with the Board and its agents, and submit any documents or other information within a reasonable time after a request is made for such documents or information; and

l. Respondent shall make all files, records, correspondence or other documents within her control available immediately upon the demand of any member of the Board's staff or its agents.

2. At the conclusion of the probationary period, the Board shall terminate Respondent's probation provided all of the terms of this Stipulation have been met.

3. All costs associated with compliance with the terms of this stipulation are the sole responsibility of Respondent.

4. The violation of any of the terms of this Stipulation by Respondent will warrant further Board action. The Board therefore retains jurisdiction over this proceeding until all matters are finally resolved as set forth in this Stipulation.

D.

1. It is hereby agreed between the parties that this Stipulation shall be presented to the Board with a recommendation for approval from the Deputy Attorney General responsible for prosecution before the Board at the next regularly scheduled meeting of the Board.

2. Respondent understands that the Board is free to accept, modify with Respondent's approval, or reject this Stipulation, and if rejected by the Board, a formal complaint may be filed against Respondent. Respondent hereby agrees to waive any right Respondent may have to challenge the impartiality of the Board to hear the disciplinary complaint if, after review by the Board, this Stipulation is rejected.

3. If the Stipulation is not accepted by the Board, it shall be regarded as null and void. Admissions by Respondent in the Stipulation will not be regarded as evidence against Respondent at the subsequent disciplinary hearing.

4. The Consent Order shall not become effective until it has been approved by a majority of the Board and endorsed by a representative member of the Board.

5. Any failure on the part of Respondent to timely and completely comply with any term or condition herein shall be deemed a default.

6. Any default of this Stipulation and Consent Order shall be considered a violation of Idaho Code § 54-3211. If Respondent violates or fails to comply with this Stipulation and Consent Order, the Board may impose additional discipline pursuant to the following procedure:

a. The Chief of the Bureau of Occupational Licenses shall schedule a hearing before the Board. Within twenty-one (21) days after the notice of hearing and charges is served, Respondent shall submit a response to the allegations. If Respondent does not submit a timely response to the Board, the allegations will be deemed admitted.

b. At the hearing before the Board upon default, the Board and Respondent may submit affidavits made on personal knowledge and argument based upon the record in support of their positions. Unless otherwise ordered by the Board, the

evidentiary record before the Board shall be limited to such affidavits and this Stipulation and Consent Order. Respondent waives a hearing before the Board on the facts and substantive matters related to the violations described in Section A, and waives discovery, cross-examination of adverse witnesses, and other procedures governing administrative hearings or civil trials.

c. At the hearing, the Board will determine whether to impose additional disciplinary action, which may include conditions or limitations upon Respondent's practice or suspension or revocation of Respondent's license.


7. The Board shall have the right to make full disclosure of this Stipulation and Consent Order and the underlying facts relating hereto to any state, agency or individual requesting information subject to any applicable provisions of the Idaho Public Records Act, Idaho Code §§ 9-337-50.

8. This Stipulation and Consent Order contains the entire agreement between the parties, and Respondent is not relying on any other agreement or representation of any kind, verbal or otherwise.

I have read the above stipulation fully and have had the opportunity to discuss it with legal counsel. I understand that by its terms I will be waiving certain rights accorded me under Idaho law. I understand that the Board may approve this stipulation as proposed, approve it subject to specified changes, or reject it. I understand that, if approved as proposed, the Board will issue an Order on this stipulation according to the aforementioned terms, and I hereby agree to the above stipulation for settlement. I understand that if the Board approves this stipulation subject to changes, and the changes are acceptable to me, the stipulation will take effect and an order modifying the terms of the stipulation will be issued. If

the changes are unacceptable to me or the Board rejects this stipulation, it will be of no effect.

DATED this 11 day of December, 2001.

A handwritten signature in cursive script, reading "Cindy L. Brown", written over a horizontal line.

Cindy Lynn Brown

Respondent

I concur in this stipulation and order.

DATED this 18 day of December, 2001.

STATE OF IDAHO

OFFICE OF THE ATTORNEY GENERAL

By Kirsten Wallace

Kirsten L. Wallace

Deputy Attorney General

ORDER

Pursuant to Idaho Code § 54-3204, the foregoing is adopted as the decision of the Board of Social Work Examiners in this matter and shall be effective on the 1 day of April, 2001. **IT IS SO ORDERED.**

IDAHO STATE BOARD

OF SOCIAL WORK EXAMINERS

By Robert Payne

~~Kenneth Salzman~~, Chair
Robert Payne

CERTIFICATE OF SERVICE

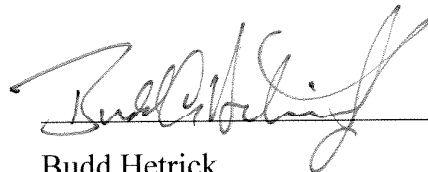
I HEREBY CERTIFY that on this 2nd day of April, 2001, I caused to be served a true and correct copy of the foregoing by the following method to:

Cindy Lynn Brown
14398 Promise Lane
Pocatello, ID 83202

- ☒ U.S. Mail
- ☐ Hand Delivery
- ☒ Certified Mail, Return Receipt Requested
- ☐ Overnight Mail
- ☐ Facsimile: _____
- ☐ Statehouse Mail _____

Kirsten L. Wallace
Deputy Attorney General
P.O. Box 83720
Boise, ID 83720-0010

- U.S. Mail
- ☐ Hand Delivery
- ☐ Certified Mail, Return Receipt Requested
- ☐ Overnight Mail
- ☐ Facsimile: _____
- ☒ Statehouse Mail _____



Budd Hetrick

Deputy Bureau Chief

Bureau of Occupational Licenses

ORIGINAL

MARK L. HIEDEMAN
BANNOCK COUNTY PROSECUTOR
P.O. BOX P
POCATELLO, ID 83205-0050
(208) 236-7280

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BANNOCK

STATE OF IDAHO,
Plaintiff,

vs.

CINDY L. BROWN,
Defendant.

COMPLAINT - CRIMINAL

CR FE-00-00158

Personally appeared before me this 14 day of March,
2000, JOE KINGSLEY in POCATELLO, in the County of Bannock, who,
first being duly sworn, complains of CINDY L. BROWN and charges the
defendant with the public offense of GRAND THEFT, Idaho Code
§18-2403(1) and §18-2407(1), committed as follows, to-wit:


That the said CINDY L. BROWN in POCATELLO, in the County
of Bannock, State of Idaho, on or between the 1st day of January,
1998, and the 31st day of October, 1999 did take, obtain or
withhold, with the intent to deprive another of their property, or
to appropriate the same to self or a third person, United States
Currency, having a value in excess of \$1,000.00, lawful money of
the United States, the property of the City of Pocatello.

All of which is contrary to the form of the statute in
said State made and provided and against the peace and dignity of
the State of Idaho.

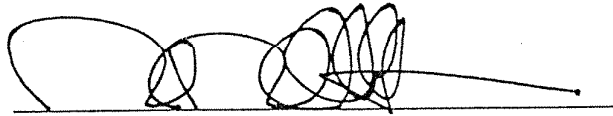
Exhibit A
Page 1 of 2

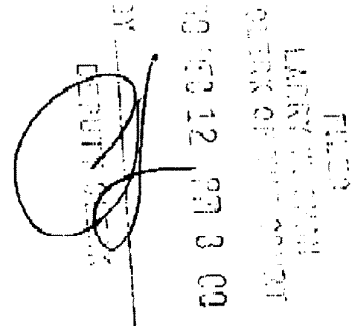
DATE 4/4/2000
Cindy RB

Said complainant prays that a Summons be issued for the said CINDY L. BROWN directing the defendant to appear and answer to said charge that the defendant may be dealt with according to law.


JOE KINGSLEY

SUBSCRIBED AND SWORN to before me this 14 day of March,
2000.


MAGISTRATE



IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BANNOCK

Register #CRFE00-00158B

STATE OF IDAHO,

Plaintiff,

-vs-

CINDY L. BROWN,

Defendant.

MINUTE ENTRY & ORDER

The above named Defendant appeared in Court on the 7th day of December, 2000 with her counsel, Shawn Anderson, for further proceedings. Mark L. Hiedeman, Bannock County Prosecuting Attorney, appeared on behalf of the State of Idaho.

At the outset, the State moved to amend the Prosecuting Attorney's Information charging the Defendant with **PETIT THEFT, I.C. 18-2403 and 18-2407(2), (A MISDEMEANOR)** upon the Defendant agreeing to pay \$19,000.00 restitution by January 8, 2001. There being no objection, said motion was **GRANTED**. The State then submitted an Amended Prosecuting Attorney's Information to the

Court.

Thereafter, the Defendant moved to withdraw her plea of Not Guilty heretofore entered and there being no objection, said Motion was **GRANTED**.

When asked by the Court, the Defendant entered a plea of **GUILTY** to the charge of **PETIT THEFT, I.C. 18-2403 and 18-2407(2), (A MISDEMEANOR)**, and submitted her signed and completed Questionnaire to the Court. Following questioning by the Court, the Defendant's plea was accepted as being voluntarily and knowingly given.

IT IS FURTHER ORDERED that the **MISDEMEANOR SENTENCING** in this matter be and the same is hereby set **MONDAY, JANUARY 8, 2001 AT THE HOUR OF 1:00 P.M.** at the Bannock County Courthouse, Pocatello, Idaho before the undersigned Judge.

IT IS FURTHER ORDERED that the **O.R. Release** in this matter be and the same is hereby **CONTINUED**, with the Defendant being advised that the following conditions are attached to said release, to-wit: (1) Defendant shall keep in touch with her attorney (2) Defendant is required to appear at all scheduled proceedings; and (3) Defendant shall not violate any laws of the City, County, State and Federal government during the period of said release (4)

Defendant shall not leave the State of Idaho without permission of her attorney. Defendant was further advised that failure to comply with the conditions of said release could result in the issuance of a Bench Warrant for her arrest and the revocation of said O.R. Release.

DATED December 12, 2000.


N. RANDY SMITH
District Judge

Copies to:
Mark L. Hiedeman
Shawn Anderson
Misdemeanor Probation

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BANNOCK

Register No. CRFE00-00158B
STATE OF IDAHO,

Plaintiff,

-vs-

CINDY L. BROWN,

Defendant.

JUDGMENT

The above named Defendant appeared in Court on the 8th day of January, 2000 with her counsel, Shawn Anderson, for Misdemeanor Sentencing. Deborah A. Lantermo, Deputy Prosecuting Attorney, appeared on behalf of the State of Idaho.

The Defendant having heretofore on the 7th day of December, 2000 entered a plea of **GUILTY** to the charge of **PETIT THEFT, I.C. 18-2403 and 18-2407(2) (A MISDEMEANOR)**; the Court having heard comments and recommendations from respective counsel and being fully advised in the premises,

NOW, THEREFORE, IT IS THE JUDGMENT of this Court that the Defendant be sentenced to **ONE (1) YEAR** in the Bannock County

Jail, with TWO HUNDRED SEVENTY FIVE (275) DAYS SUSPENDED. The Defendant shall be required to serve NINETY (90) DAYS in the Bannock County Jail. The Defendant shall be placed on misdemeanor probation for a period of TWO (2) YEARS.

IT IS FURTHER ORDERED that in addition to the terms and conditions to be imposed by the Misdemeanor Probation Department, this Court imposes the following terms and conditions:

1. The Defendant will pay her Court costs of \$38.50, victims compensation fund of \$25.00, costs of the prosecution of \$250.00 for a total of \$313.50 on a monthly basis, with the Defendant paying the total amount no later than Friday, January 12, 2000;
2. The Defendant shall comply with any and all directives of her probation officer, including, but not limited to undertaking such counseling and treatment as recommended by the probation officer;
3. The Defendant shall maintain full time employment or be enrolled in a full time vocational or educational program;
4. The Defendant shall refrain from associating with any person designated by her probation officer or the Court;
5. The Defendant shall abstain from the use of alcohol and the use of drugs unless prescribed by a doctor. She will not have them in her possession, her home, or her automobile;
6. The Defendant shall not frequent any bar or business establishment where the primary source of income is from the sale of alcohol;
7. The Defendant shall submit to random testing of her blood, breath and urine at the request of a law enforcement officer, her probation officer, or the Court. He shall further submit to random searches of her person and property by the probation officer without a warrant;
8. The Defendant shall not possess, purchase, or carry weapons of any kind;
9. The Defendant's probation officer shall be granted 90 days

discretionary jail time;

10. The Defendant shall report to the Bannock County Jail on FRIDAY, JANUARY 12, 2000 AT THE HOUR OF 5:00 P.M. to begin her sentence.

11. The Defendant shall be entitled to a work release during her incarceration. It shall be the Defendant's responsibility to provide the jail with a copy of her work release schedule.

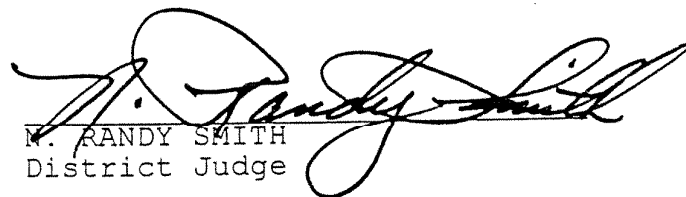
12. The Defendant shall not be the signator on anyone else's checking account during the term of the probation without the prior written permission of the probation officer. Further, the Defendant shall not have any credit cards during said probationary period.

13. The Defendant shall not be employed or in any fiduciary position during the term of her probation.

DEFENDANT IS HEREWITH ADVISED THAT VIOLATION OF ANY OF THE TERMS AND CONDITIONS SET FORTH HEREIN, THOSE SET FORTH IN THE PROBATION AGREEMENT ENTERED INTO WITH THE MISDEMEANOR PROBATION DEPARTMENT AND ANY CONDITIONS SET FORTH IN ANY ORDER FOR WORK RELEASE GRANTED, THE DEFENDANT SHALL BE CONSIDERED BY THE COURT AS A VIOLATION OF HER PROBATION.

Defendant is herewith advised that in the event said Defendant desires to appeal the foregoing sentence, said appeal must be filed with the District Court no later than forty-two (42) days from the date said sentence is imposed.

DATED this 8th day of January, 2000.


M. RANDY SMITH
District Judge

Copies to:
Mark L. Hiedeman
Shawn Anderson
Misdemeanor Probation
Bannock County Sheriff

Register No. CRFE00-00158B
STATE OF IDAHO,

-VS-

Defendant.

MINUTE ENTRY & ORDER RE:
MOTIONS

At the commencement of the hearing, the Court informed the parties that it had received Dr. Kenneth Lindsey's psychological assessment and competency evaluation of the Defendant. The Court

then informed counsel that it would rely on such report in its decision.

The Court next heard the respective arguments of counsel regarding both motions. The Court then took both motions under advisement. The Court now DENIES both motions.

I.

Rule 33(c) of the Idaho Criminal Rules provides:

A motion to withdraw a plea of guilty may be made only before sentence is imposed or imposition of sentence is suspended; but to correct manifest injustice the court after sentence may set aside the judgment of conviction and permit the defendant to withdraw defendant's plea.

The decision whether to grant or deny a motion to withdraw a guilty plea therefore lies in the discretion of the trial court. *State v. Freeman*, 110 Idaho 117, 714 P.2d 86 (Ct.App.1986). The exercise of a trial court's discretion in determining whether a defendant may withdraw her plea is therefore affected by the timing of the motion to withdraw plea. *State v. Ballard*, 114 Idaho 799, 801, 761 P.2d 1151, 1153 (1988); *State v. McFarland*, 130 Idaho 358, 361, 941 P.2d 330, 333 (Ct.App.1997). After sentencing, the plea may only be withdrawn to correct "manifest injustice." The defendant also has the burden of demonstrating such "manifest injustice." *State v. Henderson*, 113 Idaho 411, 744 P.2d 795 (Ct.App.1987). The strict standard is justified to insure that an accused is not encouraged to plead guilty to test the weight of potential punishment and withdraw the plea if the

sentence were unexpectedly severe. *McFarland*, 130 Idaho at 361, 941 P.2d at 333; *Freeman*, 110 Idaho at 121, 714 P.2d at 90.

The Idaho Court of Appeals has also held the following in regard to the motion:

Of course, if the plea is legally defective, relief must be granted. Conversely, if the plea has been made knowingly, intelligently and voluntarily, it usually cannot be withdrawn after sentencing.

State v. Detweiler, 115 Idaho 443, 445, 767 P.2d 286, 288 (Ct.App.1989) citing *State v. Simons*, 112 Idaho 254, 731 P.2d 797 (Ct.App.1987).

Before accepting a guilty plea, the trial court must satisfy itself that the plea is offered voluntarily, knowingly and intelligently. *State v. Colyer*, 98 Idaho 32, 557 P.2d 626 (1976). The plea must be entered with "a full understanding of what the plea connotes and of its consequence." *Brooks v. State*, 108 Idaho 855, 857, 702 P.2d 893, 895 (Ct.App.1985) (quoting *Boykin v. Alabama*, 395 U.S. 238 (1969)). In Idaho, the trial court must follow the minimum requirements of Rule 11(c) of the Idaho Criminal Rules in accepting pleas of guilty. If the record indicates that the court followed those requirements, a prima facie showing that the plea is voluntary and knowing has been made. The defendant then has the burden of persuasion to demonstrate a manifest injustice by establishing that the plea was induced by misapprehension, inadvertence or ignorance. *Detweiler*, 115 Idaho at 446, 767 P.2d at 289.

The transcript of the proceedings where this Defendant

changed her plea shows that she had a full understanding of her rights, the nature of the offense, the possible punishments, and the consequences of her plea. At no time did she indicate confusion as to any of these issues and/or an impaired understanding. The record also shows that she was not coerced and that she understood what she was doing.

The Defendant now claims that she knew she was lying at the time she changed her plea, but did so at the request of her counsel. After listening to both the Defendant's testimony and that of her former counsel, Mr. Anderson, the Court does not believe the Defendant. At the hearing where she changed her plea, the Defendant told the Court that (1) she had no problem with her attorney; (2) she had no concerns about her representation; (3) she constantly had enough time to visit with her attorney about the ramifications of the case; (4) she had visited with her attorney about what the prosecution would have to prove in order to convict her; and (5) she knew that, after telling the Court that she knew what she was doing and had no problem with her attorney, she would not get out of her plea. The Court does not now believe that she lied at that time, but is now telling a truthful different story.

The Defendant next argues that she got a different sentence than she had been told by her attorney that she would get. Again, the Court does not believe the Defendant's testimony. At the

change of plea hearing, the Defendant told the Court that (1) the consequences of her plea could subject her to one year in the county jail and/or a \$1,000 fine; (2) she could get that sentence; (3) no one had promised her any favorable treatment, but instead she could get all of the penalties she had recited to the Court; and (4) no withheld judgment was offered by the State. While the Defendant's husband and father testified that they too thought she would be getting a different sentence (given conversations with her lawyer), neither of them were in every conversation with the Defendant's lawyer. The Court made it perfectly clear to this Defendant that she could be getting one year in jail and a \$1,000 fine. The Defendant told the Court that she knew of that result, but still wanted to plead guilty.

The Defendant next argues that she is innocent, and it would be manifest injustice for her to be convicted and have to pay the price for such conviction. Again, the Court is not convinced. At the change of plea hearing, the Defendant (1) read the amended prosecuting attorney's information and admitted that she was guilty of the misdemeanor crime charged there; (2) affirmed that she was answering the questions truthfully; and (3) affirmed that it was her desire to plead guilty. The Court is also not convinced, from the testimony at the hearing on these motions, that she would have been found not guilty of the felony. The Defendant admits to falsifying many checks allegedly paid to the

City of Pocatello for pool rent. The Defendant's accountant even admits that he cannot document that the Defendant applied over \$19,000 for the benefit of the Swim Team. Though two witnesses would testify that the Swim Team Supervising Board knew of all expenditures and approved them, one of the witnesses hardly ever attended board meetings, and there were no minutes of any board meetings introduced into evidence. This Court is not convinced that anyone can/should remember every expenditure and its approval at several Swim Team Board Meetings happening years ago.

II.

This Rule 35 Motion was not brought to correct an illegal sentence nor to correct a sentence that was imposed in an illegal manner. It was brought to reduce the sentence, a plea for leniency. The decision as to such Rule 35 motions is in the sound discretion of the district court. *State v. Copenhaver*, 129 Idaho 494, 496, 927 P.2d 884, 886 (1996). In reviewing a sentence under a Rule 35 plea for leniency, the same four criteria are applied as when the sentence was originally imposed. *State v. Book*, 127 Idaho 352, 355, 900 P.2d 1363, 1365 (1995). The trial court therefore applies the following criteria: (1) the protection of society; (2) deterrence to the defendant and others; (3) the possibility of rehabilitation; and (4) punishment or retribution. *Book*, 127 at 354, 900 P.2d at 1365. A court will also examine additional information subsequently presented to the court in

support of the motion. *State v. Shiloff*, 125 Idaho 104, 107, 867 P.2d 978, 981 (1994).

"The primary consideration [at sentencing] is and presumptively always will be, the good order and protection of society. All other factors are, and must be, subservient to that end." *State v. Moore*, 78 Idaho 359, 363, 305 P.2d 1101, 1103 (1956). Therefore, this Court always puts restitution to the victims first in a sentence for embezzlement and/or petit theft. The reimbursement to the Swim Team of \$19,000 (the stipulated amount of restitution) was therefore paramount in this sentencing. That amount has already been paid. The Court is also aware of many other expenses that the Swim Team allegedly incurred as a result of this problem. However, the parties agreed to the restitution amount. Therefore, buyer's remorse on either side is now given little weight by the Court in its decision making.

The Court thereafter emphasized deterrence in this sentencing. The sentence was tailored to give the Defendant and others the message that the Court will not tolerate embezzlement/petit theft. Imposing a sentence and then suspending all but 90 days of it was meant to deter this Defendant and others from this conduct in the future. This Court does not believe that such a sentence should be changed. No jail time would be no deterrence.

The Court did consider rehabilitation in its original

sentence. However, the ability for the system to help rehabilitate a person is somewhat hampered by the attitude of the Defendant. While the Defendant's attitude has always seemed to reflect that she might have done something wrong (but not intentionally), the Court believed that she needed some time in jail to help with rehabilitation. Therefore, the Court sentenced as it did and does not change its position as to the sentence.

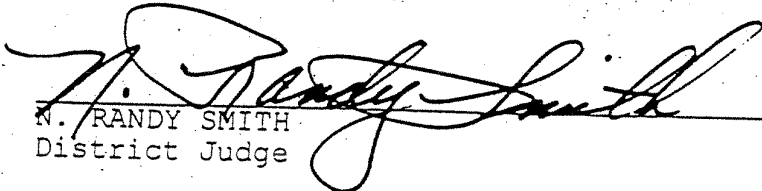
However, at this time (at least a month after sentencing), the Court has learned more about this Defendant. In Dr. Lindsey's psychological assessment and competency evaluation, he recommends that (1) the Defendant continue to receive aggressive medication management and counseling services; (2) these services continue upon placement in the community as a condition of probation; (3) the Defendant would benefit from skills-based interventions focused upon improving mood management and interpersonal problem solving skills; (4) the Defendant's compulsive/addictive activities will require focus in counseling; and (5) a relapse prevention approach would assist the Defendant avoid problematic behaviors. Therefore, this Court would grant a petition by this Defendant to (1) exchange each day of jail time left to be spent in the Bannock County Jail for two days of time on house arrest (only leaving the house for treatment, medical services, work at Bannock Regional Medical Center, and/or to attend church) and (2) evidence to the Court that she has established plans to undertake

such treatment and counseling, as are approved by Dr. Lindsey.

The Court would now allow this petition, because the Defendant is not a violent criminal, may certainly be assisted by treatment, has no prior criminal record, has spent at least a month in the county jail on a misdemeanor petit theft conviction, and has already paid the stipulated restitution (the primary goal of this sentence). This petition would also continue to enforce the 90 days (which were not suspended in the sentence), instead exchanging each day of the sentence (left to be served in jail) for two days on house arrest.

IT IS SO ORDERED.

DATED February 13, 2001.


N. RANDY SMITH
District Judge

Copies to:

Mark L. Hiedeman
Ronald S. George
Misdemeanor Probation
Bannock County Jail

Register No. CRFE00-00158B
STATE OF IDAHO,

-VS-

Defendant.

MINUTE ENTRY & ORDER

On the 13th day of February, 2000 the Court allowed the Defendant to petition the Court, to exchange the remaining jail time to be served on the sentence, for time to be served on house arrest.

Exhibit E
Page 1 of 3

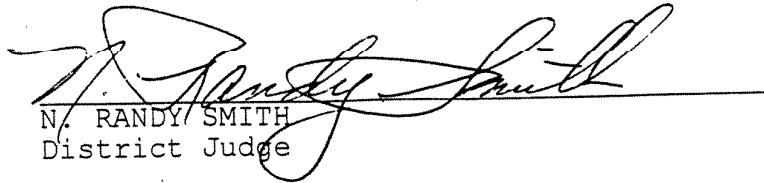
IT IS HEREBY ORDERED that the Defendant shall be allowed to exchange each day of her sentence (left to be served in jail) for two days on house arrest.

IT IS FURTHER ORDERED that the Defendant shall be **RELEASED** on Thursday, February 15, 2001 at the hour of 8:00 a.m. from the Bannock County Jail with an ankle monitor in place. The Defendant shall also be required to pay for all fees incurred with such monitor. The Defendant shall be allowed to leave her residence for any treatment which has been recommended by Dr. Lindsay, any medical treatment, employment at Bannock Regional Medical Center, and to attend church.

IT IS FURTHER ORDERED that the Defendant shall appear at her scheduled appointment with Dr. Lindsay on Tuesday, February 20, 2001 at the hour of 4:00 p.m. The Defendant shall thereafter follow any recommendations that Dr. Lindsay shall set forth, which shall include that the Defendant comply with her physician's recommendations regarding any psychotropic medications. The Defendant shall also attend, and cooperate on a weekly basis with her counselor, Tanna Forsman. The Defendant shall NOT gamble, or partake in any alcohol or substance abuse during the term of her probation.

IT IS SO ORDERED.

DATED February 15, 2001.


N. RANDY SMITH
District Judge

Copies to:
Mark L. Hiedeman
Ronald S. George
Misdemeanor Probation
Bannock County Jail

AUTHORIZATION FOR RELEASE OF INFORMATION

I hereby authorize and direct any hospital, physician, social worker, counselor, or any other person who has any information regarding my compliance with the Stipulation and Consent Order of the Idaho State Board of Social Work Examiners at any time to release any and all medical records, counseling records, urinalysis tests, blood tests, reports, notes and/or information to the Idaho State Board of Social Work Examiners, to Kirsten L. Wallace, prosecuting attorney for the Idaho State Board of Social Work Examiners, or to such other representative of the Idaho State Board of Social Work Examiners as may be designated, for examination and for copying thereof, upon request for such records, reports, notes or information.

I further authorize any hospital, physician, counselor, or other person who has such information to consult with or discuss such information with any of the above named entities or persons.

I further consent that a photocopy of this authorization may be used in lieu of the original hereof.

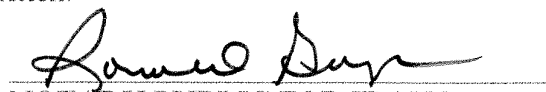
DATED this 11 day of December, 2001.


Cindy Lynn Brown

STATE OF IDAHO)
) ss
County of Ada)

On this 11 day of Dec., 2001, before me, the undersigned, a Notary Public in and for said State, personally appeared Cindy Lynn Brown, known or identified to me to be the person whose name is subscribed to the within instrument, and acknowledged to me that he executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.


NOTARY PUBLIC FOR IDAHO
Residing at: Pocatello ID
My Commission Expires: 11/19/04